

al. in view of Hall. The cited section of Spencer is from Column 6 of the patent 6,040,497 (hereinafter '497). Spencer teaches crossing a transgenic plant with a non-transgenic plant and spraying the progeny for herbicide resistance. The '497 patent does not teach nor suggest spraying the progeny at any specific level or stage of growth. What is accomplished in the Spencer spraying is the death of susceptible plants, as the progeny will be segregating.

In contrast as taught in the present invention, and as is now claimed more clearly in Claim 1, the present invention involves spraying the progenitor plants so that the progeny are not segregating in expected ratios because the progenitor was after spraying was preferentially having resultant pollen which carries the herbicide resistant gene. The segregation (if any) shown in the present invention is preferentially resistant. The prior art simply identifies that the progeny will segregate for resistance to the herbicide.

In the present invention the progeny plants which are preferentially carrying the herbicide resistance gene can then be used as progenitors and sprayed while a progenitor in the vegetative stage to preferentially having resultant pollen which carries the herbicide resistant gene.

This concept is not taught nor suggested by the prior art.

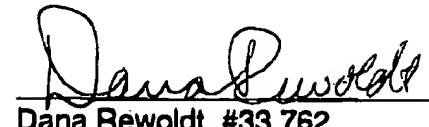
This present invention is not shown or suggested by the prior art.

Therefore the claims as amended are believed to be in allowable form. The Applicant requests that notice of allowance be kindly reconsidered as to the amended claims.

If this response is not in full compliance with the new amendments to the code the Applicant requests that the Examiner notify the Applicant as soon as possible so that compliance can be achieved in a timely manner.

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Respectfully submitted,



Dana Rewoldt  
Dana Rewoldt, #33,762  
Garst Seed Company  
2369 330<sup>th</sup> Street, Box 500  
Slater, IA 50244  
(515) 685-5201

09/100,516

**CERTIFICATE OF FACSIMILE TRANSMISSION UNDER 37 C.F.R. 1.6(d)**

I hereby certify that the above Amendment under 37 C.F.R. §§ 1.114 and 1.116 was transmitted by facsimile to the Assistant Commissioner for Patents (703-308-6916) on April 19, 2002.

  
Dana Pewoldt